

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF NEW YORK**

Safeco Insurance Company of America,  
as Subrogee of Michael & Erin Sciarrino  
Safeco Plaza  
Seattle, WA

Plaintiff,

V.

**MIG Building Systems, Inc.**  
100 Ontario Street  
East Rochester, NY 14445,

Defendant

Case No. 5:15-CV-0316 (GTS/ATB)

## JURY TRIAL DEMANDED

## COMPLAINT

Plaintiff, Safeco Insurance Company of America, as Subrogee of Michael and Erin Sciarrino, by and through its undersigned attorneys, upon information and belief, hereby alleges as follows:

## PARTIES

1. Plaintiff, Safeco Insurance Company of America (“Safeco”) is a Washington corporation, with its principal place of business at Safeco Plaza, Seattle, Washington, and at all times material hereto, was authorized to issue insurance policies in the State of New York.

2. Defendant, MIG Building Systems, Inc. (“MIG”), is a New York corporation, with a principal place of business at 100 Ontario Street, East Rochester, County of Monroe, New York, and at all times material hereto, was engaged in, *inter alia*, fireplace sales and installation.

**JURISDICTION AND VENUE**

3. Jurisdiction is based upon diversity of citizenship pursuant to 28 U.S.C. §1332 in that this is an action between citizens of different states and the amount in controversy, exclusive of costs and interest, exceeds the sum of Seventy-Five Thousand Dollars (\$75,000.00).

4. Venue is properly laid in this judicial district because the event giving rise to this action occurred in this judicial district.

**JURY DEMAND**

5. A jury trial is demanded as to all issues.

**FACTUAL ALLEGATIONS**

6. At all times material hereto, Safeco's insureds, Michael and Erin Sciarrino ("the Sciarrinos"), owned and resided at the real property located at 67 Cross Country Drive, Baldwinsville, New York ("the Property").

7. At all times material hereto, Safeco provided a property insurance policy to the Sciarrinos for the Property pursuant to policy number K05761726 ("the Policy").

8. Prior to January 1, 2014, defendant MIG supplied and installed a wood burning factory built fireplace at the Property ("the Fireplace").

9. On or about January 1, 2014, a fire occurred the Property ("the Fire").

10. The Fire started as a result of embers escaping the Fireplace and igniting the combustible subfloor beneath the Fireplace.

11. The Fire was the result of an improper installation of the Fireplace by defendant MIG.

12. Pursuant to the terms of the Policy, plaintiff Safeco reimbursed its insureds in the amount of \$191,510.72 for damages resulting from the Fire.

13. In accordance with the common law principles of legal and equitable subrogation and the terms of the Policy, to the extent of its payments, plaintiff Safeco is subrogated to the rights of its insureds with respect to any claims against defendant.

**COUNT I: NEGLIGENCE**

14. Plaintiff incorporates by reference each of the foregoing paragraphs as though each was fully set forth at length herein.

15. The Fire and resulting damage to the Property was caused by the negligence, carelessness, gross negligence of defendant MIG, its agents, workmen, and/or employees acting within the course and scope of their employment in:

- (a) installing the Fireplace in such a manner that it created a dangerous condition and risk of fire at the Property;
- (b) failing to install the Fireplace in accordance with the manufacturer's specifications;
- (c) failing to install the Fireplace in accordance with all codes and industry standards;
- (d) supplying the Fireplace in a defective condition which created a risk of fire at the Property;
- (e) such other and further negligent acts and omissions which may be revealed through discovery.

16. As a direct and proximate result of defendant's breach of the aforesaid negligence, the Fire occurred and resulted in significant damages.

WHEREFORE, plaintiff demands judgment against defendant MIG in the amount of \$191,510.72 together with interest and the costs of this action.

Respectfully submitted,

Bowitch & Coffey, LLC

/s Daniel W. Coffey  
Daniel W. Coffey, Esq.  
NDNY Bar Roll No.: 506125  
17 Elk Street  
Albany, NY 12207  
(518) 813-9500 (phone)  
(518) 207-1916 (fax)  
[coffey@bcalbany.com](mailto:coffey@bcalbany.com)  
*Counsel for Plaintiff*

Of Counsel for Plaintiff:  
Daniel J. Luccaro, Esq.  
Cozen O'Connor  
1900 Market Street  
Philadelphia, PA 19103  
(215) 665-6968 (phone)  
(215) 701-2368 (fax)  
[dluccaro@cozen.com](mailto:dluccaro@cozen.com)